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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench : Hon'ble Shri Justice Satish K. Agnihotri

Writ Petition (C) No. 1597 of 2007

Jagdev Singh

Versus

State of C.G. & Another

ORDER

Post for 2-04-2007

Sd/-
Satish K. Agnihotri
Judge

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Single Bench : Hon'ble Shri Justice Satish K. Agnihotri

Writ Petition (C) No. 1697 of 2007

Petitioner : Jagdev Singh, S/o Darbar Singh, Aged about 55 years, R/o Santosh Dhaba, Village Jali, Katghora Road, Teh. Kota, Thana Ratanpur, Distt. Bilaspur (CG).

Versus

Respondents :

1. State of C.G., Through Collector, Distt. Bilaspur (CG).
2. Naib Tahsildar, Ratanpur, Distt. Bilaspur.

Present :- Miss Sofia Khan, counsel for the petitioner.
Shri Utkarsh Verma, Govt. Advocate for the State/respondents.

ORDER

(Delivered on 2nd April, 2007)

By this petition, the petitioner impugns the order dated 9-2-2007 whereunder the petitioner has been directed to remove the encroachment within a period of seven days and pay a penalty of Rs.1,500/- as fine for unauthorizedly taking possession of the Government land and order dated 19-2-2007 whereunder warrant for ejection of the petitioner from the Government land was issued.

2) The indisputable facts are that the petitioner unauthorizedly occupied 0.50 acres of Government land bearing khasra No.6/1 admeasuring 74.39 hectares in Patwari Halka No.19, Revenue Circle Kota, Tehsil Kota, District Bilaspur. On a complaint made by the Revenue Authorities with regard to illegal occupation of the Government land by the petitioner as stated above, a notice

was issued on 2-2-2007 returnable on 6-2-2007. The petitioner appeared and sought for time till 9-2-2007. On 9-2-2007, the Naib Tahsildar, Ratanpur, District Bilaspur (respondent No.2) after perusing all the revenue records and hearing the petitioner held that the petitioner was in unauthorized possession of the Government land. Accordingly an order was passed to vacate the same within a period of seven days and to pay a sum of Rs.1,500/- as penalty for unauthorizedly taking possession of the Government land, in exercise of his power under the provisions of Section 248 of the Chhattisgarh Land Revenue Code, 1959 (*for short "the Code, 1959"*). The petitioner failed to comply with the order dated 9-2-2007, thus warrant for ejection was issued on 19-2-2007 by the respondent No.2.

3) Being aggrieved and dissatisfied with the impugned orders, the petitioner filed this petition under Article 227 of the Constitution mainly on the ground that respondent No.2 has no jurisdiction to exercise power of Tahsildar under Section 248 of the Code, 1959. The petitioner contended mildly other points on the merit also.

4) After hearing learned counsel for the petitioner and perusing provisions of law, pleadings and records appended thereto, it is clear that the power of Tahsildar can be exercised by the Naib Tahsildar under the provisions of Section 24 of the Code, 1959, which reads as under :

> "**24. Conferral by State Government of powers of Revenue Officers on Officials and other persons.**—(1) The State Government may confer on any person the powers conferred by or under this Code on any Revenue Officer.
>
> (2) The State Government may confer on any Assistant Collector, Tahsildar or Naib Tahsildar the powers conferred by this Code on a Revenue Officer of a higher grade."

Sub-section (2) of Section 24 of the Code, 1959 clearly provides that the State Government may confer on any Assistant Collector, Tahsildar or Naib Tahsildar the powers conferred by this Code on a Revenue Officer of a higher grade.

5) Section 248 of the Code, 1959 reads as under :

> "248. Penalty for unauthorizedly taking possession of land.—(1) Any person who unauthorizedly takes or remains in possession of any unoccupied land, abadi, service land or any other which has been set apart for any special purpose under Section 237 or upon any land which is the property of Government may be summarily ejected by order of the Tahsildar and any crop which may be standing on the land and any building or other work which he may have constructed thereon, if not removed by him within such time as the Tahsildar may fix shall be liable to forfeiture. Any property so forfeited shall be disposed of as the Tahsildar may direct and the cost of removal of any crop, building or other work and of all works necessary, to restore the land to its original condition shall be recoverable as an arrear of land revenue from him. Such person shall also be liable at the discretion of the Tahsildar to pay the rent of the land for the period of unauthorized occupation at twice the rate admissible for such land in locality and to a fine which may extend to five thousand rupees and to a further fine which may extend to twenty rupees for every day on which such unauthorized occupation or possession continues after the date of first ejectment. The Tahsildar may apply the whole or any part of the fine to compensate persons, who may in his opinion have suffered loss or injury form the encroachment.
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> (2) It shall not be competent to the Tahsildar to impose a fine of amount exceeding one thousand fie hundred rupees but if in any case he considers that circumstances of the case warrant imposition of a higher fine, he may refer the case to the Sub-Divisional Officer who shall, then, after giving the party concerned an opportunity of being heard, pass such orders in respect of fine as he may deem fit.
>
> (2-A) If any person continues in unauthorized occupation or possession of land for more than seven days after the date of order of ejectment under sub-section (1), then without prejudice to the fine that may

be imposed thereunder the Sub-Divisional Officer shall cause him to be apprehended and shall send him with a warrant to be confined in a civil prison for a period of fifteen days in case of first ejectment and three months in case of second or subsequent ejectment.

Provided that no action under this sub-section shall be taken—

(i) unless a notice is issued calling upon such person to appear before the Sub-Divisional Officer on a day to be specified in the notice and to show cause why he should not be committed to the civil prison.

(ii) in respect of encroachments on Government and Nazul lands for the settlement of which the Government have issued orders from time-to-time.

Provided further that the Sub-Divisional Officer may order the release of such person from detention before the expiry of the period mentioned in the warrant if he is satisfied that the unauthorized possession has been vacated.

Provided also that no woman shall be arrested or detained under this sub-section.

(2-B) The State Government may make rules for the purpose of carrying into effect the provisions of sub-section (2-A).

(3) No order under sub-section (1) shall prevent any persons form establishing his rights in a Civil Court."

Under the provisions of Section 248 of the Code, 1959, the Tahsildar may pass ejection order summarily and further may impose a sum of Rs.1,500/- as penalty. In case penalty exceeds Rs.1,500/-, the Sub Divisional Officer is competent to pass the order.

6) The State Government in exercise of its jurisdiction under the provisions of sub-section (2) of Section 24 of the Code, 1959 conferred powers of Tahsildar, as provided under the Code, 1959, to all the confirmed Naib Tahsildars and all other Naib Tahsildars who have completed two years of service and passed all the prescribed departmental examinations by notification No.1170-1345-VII-NI, dated 11-3-1972, published in M.P. Rajpatra, pt.I, dated 12-5-1972, p.548. Thus, the Naib Tahsildar is fully competent to exercise

power of Tahsildar as conferred on a Tahsildar for exercise of powers under Section 248 of the Code, 1959. It is accordingly held that the Naib Tahsildar (respondent No.2) is fully competent to exercise power of Tahsildar under Section 248 of the Code, 1959.

7) The next contention of the petitioner on merit that the summary order cannot be passed in exercise of its power under Section 248(1) of the Code, 1959 without looking into all the relevant documents and giving full opportunity of hearing to the petitioner is without any basis as the order itself indicates that the impugned order dated 9-2-2007 was passed after perusing the entire records and the provisions of Section 248 of the Code, 1959 provides for summary ejection from the unauthorized possession of the Government land.

8) Even otherwise, if the petitioner is dissatisfied with the findings of the Naib Tahsildar, the petitioner can very well take recourse to legal remedy that may be available under sub-section (3) of Section 248 of the Code, 1959. This Court is not inclined to entertain the case on facts with regard to the ownership or title as the same requires production of oral and documentary evidences, their appreciation to decide the ownership or title of the petitioner, if so claimed.

9) The petitioner is at liberty to take recourse to other statutory remedies that may be available to him.

10) In view of the foregoing, this petition deserves to be and is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Gowri